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LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

[Docket No. 2014-04]

Changes to Recordation Practices

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is proposing to amend its regulations for the recordation of copyright transfers and other documents. The proposed rule is intended to reduce the amount of time the Office requires to process certain types of documents submitted for recordation and help to alleviate remitter concerns regarding the receipt of documents for processing. To these ends, the Office is proposing to amend the regulations to encourage remitters to include a cover sheet with the documents they submit for processing; allow remitters to submit long title lists in electronic format; and provide remitters with the option to request return receipts that acknowledge that the Office has received a submission. The Office invites public comment on the proposed rule.

DATES: Written comments are due on or before August 15, 2014, at 11:59 p.m.

ADDRESSES: All comments shall be submitted electronically. A comment submission page is posted on the Copyright Office website at

<http://www.copyright.gov/rulemaking/recordation-practices>. The website interface

requires commenting parties to complete a form specifying their name and organization, as applicable, and to upload comments as an attachment via a browser button. To meet accessibility standards, commenting parties must upload comments in a single file not to exceed six megabytes (MB) in one of the following formats: a Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes. The form and face of the comments must include both the name of the submitter and organization. The Office will post the comments publicly on the Office's website in the form that they are received, along with associated names and organizations. If electronic submission of comments is not feasible, please contact the Office at 202-707-8350 for special instructions.

FOR FURTHER INFORMATION CONTACT: Jacqueline C. Charlesworth, General Counsel and Associate Register of Copyrights, by email at jcharlesworth@loc.gov or by telephone at 202-707-8350; or Sy Damle, Special Advisor to the General Counsel, by email at sdam@loc.gov, or by telephone at 202-707-8350.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1870, the Copyright Office has recorded documents pertaining to works under copyright, such as assignments, licenses, and grants of security interests. The process of recordation entails (1) receiving copyright-related documents from remitters for recordation; (2) reviewing the documents to ensure they are eligible for recordation; (3) indexing information contained in the documents for the public record; (4) making copies of the documents so they are available for public inspection; and (5) returning

documents marked as recorded to remitters. Congress has encouraged the submission of documents for recordation by providing certain legal entitlements as a consequence of recordation. For instance, recordation provides constructive notice of the facts stated in the recorded document when certain conditions are met. *See* 17 U.S.C. 205(c). In addition, recordation is a condition for the legal effectiveness of notices of terminations of transfer. *See id.* 203(a)(4)(A). Thus, the Office has an important interest in ensuring that the public record of copyright transactions is as timely, complete, and as accurate as possible.

II. Discussion

Over the past several years, the Copyright Office has sought public input on technological upgrades to the recordation function. *See* 78 FR 17722 (Mar. 22, 2013); 79 FR 2696 (Jan. 15, 2014). In addition to seeking written comments, the Office has held focused discussions with copyright owners, users of copyright records, technical experts, public interest organizations, lawyers, and professional and industry associations regarding the same. *See* 79 FR 6636 (Feb. 4, 2014). Participants in these processes have expressed a number of concerns about the current recordation system, including frustration with the submission process, the amount of time the Office requires to record remitted documents, and the searchability of the public record. These problems are related in part to the fact that recordation remains a paper-driven process (in contrast to most registration transactions, which occur electronically).¹

¹ For further information, see the comments obtained during the Copyright Office's two-year Special Projects process, particularly the Special Project on Technical Upgrades to Registration and Recordation Functions. Comments pertaining to the Special Project on Technological Upgrades to Registration and Recordation Functions are available on the Copyright Office website at http://www.copyright.gov/docs/technical_upgrades/.

In response to these concerns, the Office is currently developing a strategic plan for the improvement of both recordation services and the quality of resulting information provided to the public. *See* 79 FR 2696 (Jan. 15, 2014).² The Office recognizes that, as it continues to develop its strategy for modernizing and improving recordation services via a comprehensive reengineering, there could nonetheless be immediate benefits if certain process changes were made within the existing regime. To this end, the proposed rules implement targeted amendments that are designed to speed the processing of remitted documents under the current system and alleviate concerns regarding the Office's receipt of submissions.

1. Forms

The first change to the Copyright Office's regulations set forth in this proposed rule is purely administrative. The Office currently provides an optional Recordation Document Cover Sheet (Form DCS) to assist with processing. *See* 37 CFR 204.1(b).³ Remitters using Form DCS are instructed to include two copies of the form with their document submissions. If the Office receives Form DCS with a submission, the form becomes part of the public record and is associated with the recorded document. The Office also returns a copy of the form to the remitter at the completion of the recordation process along with the corresponding recorded document and certificate of recordation. The returned Form DCS serves as a summary of the newly created record and helps

² For further information, see the comments pertaining to the Copyright Office's Strategic Plan for Recordation of Documents. These comments are available on the Copyright Office website at <http://www.copyright.gov/docs/recordation/>.

³ The optional Recordation Document Cover Sheet (Form DCS) is available on the Copyright Office website at <http://www.copyright.gov/forms/>.

facilitate better recordkeeping and communication between the Office and remitters.⁴

Form DCS also contains an acceptable certification statement that may be used to satisfy the sworn certification requirement when applicable. *See* 17 U.S.C. 205(a); 37 CFR 201.4(a)(3)(i). Though the form would still not be a requirement for recordation itself, the Office has proposed amending its regulations to reflect the fact that Form DCS may be included with remitters' submissions, and must be included if the remitter wants a return receipt. Form DCS will be amended to conform to the new procedures proposed here (*e.g.*, by adding a checkbox to allow a remitter to indicate that it is requesting a return receipt, as described below).

2. Electronic Submission of Title Appendices

Currently, recordation specialists must review paper documents and manually transcribe selected information from the documents into an electronic format to permit indexing in the Office's Public Catalog database. Among the information that must be transcribed are the titles of copyrighted works associated with the document submitted for recordation, which are typically presented in a list appended to the document, referred to informally as a "title appendix." A title appendix associated with a document can include hundreds, or even thousands, of titles. At present, long processing times associated with document recordation stem in large part from manual entry of these titles.

To speed processing and clear the current backlog of large title entries, the Office proposes a rule to permit (but not require) the submission of title appendices in electronic format, in addition to paper format, where the total titles in a submission number 100 or

⁴ For example, the returned Form DCS will generally include the volume and document number of the newly created record, a date of recordation, and a code that links the record to applicable filing fees.

more. This includes the situation where multiple title lists associated with a document contain, in the aggregate, 100 or more titles. The proposed electronic title submission rule will be added to subsection 201.4(c), which will be retitled “Document submission contents and process.”

Under the proposed rule, the list of titles set forth in the paper submission must be submitted in a table in Excel (.xls) format, or an equivalent electronic format approved by the Office. The electronic entries may only contain letters, numbers, and printable characters that appear in the ASCII 128-character set. Each table must contain four columns respectively entitled Article, Title, Authorship Information, and Registration Number(s). Each title and its corresponding information must appear in a separate row of the electronic table:

Article: If the title begins with one of a specified list of articles, the article should be separated from the title and placed in this first column. Separating out these leading articles from the rest of the title assists with the sorting function of the Public Catalog.

The following articles are to be separated:

In English: A, An, The

In Spanish: Un, Una, El, La, Lo, Las, Los

In French: L’ (as in “L’Ecole”), Le, La, Les, Un, Une

In German: Der, Die, Das, Einer, Eine, Ein

For example, if the title of the work is “A Hard Day’s Night,” the Article field should have the word “A”; similarly, if the title of the work is “The Fly,” this field should have the word “The.” If the title does not begin with an article identified above, the column should be included and this field should remain blank. Note that the words “These,”

“Those,” “Some,” and “Any” are not considered articles and are not to be separated. In addition, the proposed rule does not require that remitters separate out articles in languages other than the ones listed.

Title: This second column should set forth the title of the work, not including any leading article (which, as explained above, should be placed in the Article column). For example, if the title of the work is “A Hard Day’s Night,” the Title field should have the remainder of the title, “Hard Day’s Night”; the Title field for “The Fly,” should have the remainder of the title, “Fly.”

Authorship Information: This third column should include the word “By” followed by the name of the author or authors of the work, *e.g.*, “By John Lennon and Paul McCartney,” or “By Paul Hewson, Dave Evans, Adam Clayton, and Larry Mullen”. If the author’s name includes a designation such as “performer known as” or “also known as,” this designation should be included in the Authorship Information field. If using the abbreviated form of such a designation, the abbreviation should be included without punctuation between the letters. For example, “By Ella Yelich-O’Connor pka Lorde” (but not “By Ella Yelich-O’Connor p/k/a Lorde”).

Registration Number(s): The fourth column should set forth the copyright registration number or numbers associated with the work if the remitter chooses to supply them. While this field is optional, the column should be included and the field left blank even if registration numbers are not supplied. Registration numbers included in the electronic list must be twelve characters long, must include a two- or three-letter prefix, and must not include spaces or hyphens. If a given registration number consists of fewer than twelve characters, the remitter should add leading zeroes to the numeric portion of

the registration number before adding it to the list. For example, if a published work has the registration number “SR-320-918,” it should be transcribed into the electronic list submitted for recordation as “sr0000320918.” Similarly, if an unpublished work has the registration number “VAu-598-764,” it should be transcribed into the electronic list submitted for recordation as “vau000598764.”

The electronic list must be stored on a compact disc, flash drive, or other digital storage medium approved by the Copyright Office that is clearly labeled with the following information: the name of the remitting party, the name of the first party listed in the paper document, the first title listed in the paper document, the number of titles included in the paper document, and the date the remitting party mailed or delivered the paper document. The storage medium on which the electronic list is stored must be included in the same package as the paper document to be recorded, unless the Office agrees to an alternative arrangement. The allowance for alternative arrangements will facilitate the submission of electronic title lists for documents submitted prior to the effective date of this rule.

By allowing remitters the option of submitting title appendices in electronic format, the Office will eliminate inefficiencies associated with the manual transcription of title information from paper to electronic format, thus significantly reducing the time and labor spent on creating these records, cutting down on inaccuracies, and providing a shorter wait time for remitters to receive their recorded documents and certificates of recordation.

The proposed rule permits electronic submission only in cases where there are 100 or more titles associated with a document. This is because the steps required to

process shorter title appendices could actually take longer than processing them in the ordinary course. The Office believes that electronic submission will prove more efficient only when indexing 100 or more titles.

The Office has also considered how to handle any discrepancies between a paper document and the electronically formatted titles accompanying that paper document. In this regard, the Office has weighed the need for an accurate public record against the need to process large title submissions in a timely fashion and has come to a preliminary conclusion that the burden of creating an accurate record for the purposes of indexing in the Public Catalog must be placed on the remitter. The Copyright Office does not intend to cross-check electronic lists of titles against paper title appendices.

The Office notes that there may be legal consequences that flow from a remitter's failure to submit an accurate electronic list of titles. For example, the Copyright Act provides that recordation of a document gives "all persons constructive notice of the facts stated in the recorded document, but only if . . . the document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work." 17 U.S.C. 205(c). Since the Office will be relying on the electronic list of titles for purposes of indexing submitted documents, inaccuracies in such electronic lists could affect the ability to later claim that the public had constructive notice of the facts in the document. Thus, the omission of a title from the electronic list could negate constructive notice with respect to that title, even if the title appears in the paper document that is recorded, because the title would not be indexed.

At the same time, if a title appears in the electronic list but is not included in the paper document that is actually recorded, the paper document will control.

An additional consideration is that, under the statute, constructive notice can be provided where the document would be revealed “by a reasonable search under the title or *registration number* of the work.” *Id.* (emphasis added). Thus, although a remitter need not provide registration numbers when recording a document, inclusion of such numbers can help to ensure that the public is on notice of the facts contained in the document. At the same time, it is important to note that the Office will not verify the accuracy of registration numbers submitted (whether on paper or electronically). A remitting party’s failure to include an accurate registration number in an electronic list, coupled with the failure to include an accurate title name, would likely prevent the title from being indexed such that the associated document would be “revealed by a reasonable search under the title or registration number of the work,” thus negating constructive notice. *Id.*

Remitters should thus ensure that the electronic list of titles fully and accurately reflects the titles contained in the paper document. If an electronic submission is inconsistent with the information contained in the paper document, such discrepancies will result in corresponding inaccuracies in the Public Catalog, and the remitter will bear the legal consequences of such inaccuracies.

3. Return Receipt

Many remitters have expressed to the Copyright Office their concern that after they submit their documents for recordation, it may take several months or longer before they receive any word on the status of their submission. The Office recognizes the

benefits of the Office's acknowledgment of receipt of a submission, even if the submission awaits processing. The Office thus proposes a new, optional receipt confirmation system under which a remitter may request that the Office provide a return receipt. Remitters seeking a return receipt must complete and enclose the required two copies of Form DCS, making sure to check the box (to be added to the form) indicating that they want a return receipt. In addition, they must include a self-addressed, postage-paid envelope in the package. Upon opening the package, the Office will attach a date-stamped return receipt to one of the cover sheets and mail it back to the remitter via the self-addressed, postage-paid envelope.

It is important to realize that a return receipt will establish only that the Office has received a submission as of the date indicated, and will not establish that a document is eligible for recordation, or provide a date of recordation. Only the certificate of recordation will provide the date of recordation. At this time, the Office will provide return receipts free of charge.

List of Subjects

37 CFR Part 201

Copyright.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Office proposes to amend part 201 to Chapter II of Title 37 of the Code of Federal Regulations as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Amend § 201.4 by revising paragraph (b) and introductory text paragraph (c), adding paragraphs (c)(4) and (f), to read as follows:

§ 201.4 Recordation of transfers and certain other documents.

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(b) *Forms.* Persons recording documents are encouraged, but not required, to complete and include a Recordation Document Cover Sheet (Form DCS), available on the Copyright Office website, with their submissions; provided, however, that if the remitter seeks a return receipt as provided in paragraph (f) of this section, then Form DCS is required. Form DCS may also be used to satisfy the sworn certification requirement of 17 U.S.C. 205(a), as provided in 37 CFR 201.4(a)(3)(i). If Form DCS is used, two copies of the completed form should accompany each document submitted for recordation, one of which will become part of the public record.

(c) *Document submission contents and process.*

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(4) *Submission of electronic title lists.* If a document submitted for recordation pertains to 100 or more titles of copyrighted works (including where the total number of titles across multiple title lists associated with the document is 100 or more), in addition to identifying the titles in the paper submission, the remitting party may also submit an electronic list (or lists) setting forth each such title, as provided herein. The electronic

list(s) shall not be considered a part of the recorded document and shall function only as a means to index titles and other information associated with the recorded document.

(i) *Method of submitting electronic title lists.* Absent a special arrangement with the Office, the electronic list must be included in the same package as the paper document to be recorded. The list must be prepared in a format consistent with the requirements of subparagraph (ii) of this paragraph (4), and stored on a compact disc, flash drive, or other digital storage medium approved by the Copyright Office that is clearly labeled with the following information: the name of the remitting party, the name of the first party listed in the paper document, the first title listed in the paper document, the number of titles included in the paper document, and the date the remitting party mailed or delivered the paper document.

(ii) *Format requirements for electronic title lists.* Any electronic list of titles submitted pursuant to paragraph (c)(4) shall conform to the requirements of this subparagraph.

The electronic list of titles shall:

- (A) consist of a table contained in an electronic file in Excel (.xls) format or an equivalent electronic format approved by the Office;
- (B) include only letters, numbers, and printable characters that appear in the ASCII 128-character set;
- (C) include four columns respectively entitled, from left to right, Article, Title, Authorship Information, and Registration Number(s);

(D) list each title on a separate row of the electronic table, and include the following information for each title in the appropriate column, as applicable:

(1) First column: *Article*. If the title of the work begins with one of the articles specified in the following list, the article should be separated from the title and placed in this column. If the title does not begin with one of the specified articles, the column must still be included, but this field should be left blank. The list of leading articles is as follows:

English: A, An, The

Spanish: Un, Una, El, La, Lo, Las, Los

French: L', Le, La, Les, Un, Une

German: Der, Die, Das, Einer, Eine, Ein

(2) Second column: *Title*. The title of the work, not including any leading article;

(3) Third column: *Authorship Information*. The word “By” followed by the author or authors of the work. Where applicable, include designations such as “performer known as” or “also known as,” or the abbreviated form of such designations. Abbreviated designations must omit any punctuation between letters, for example “pka” (not “p/k/a”); and

(4) Fourth column: *Registration Number(s)*. The copyright registration number or numbers. This field is optional; if registration numbers are not being supplied for any title in the submission, this column should still be included, but left blank. Regardless of how they appear in the paper document, registration numbers included in the electronic list must be twelve characters long, must include a two- or three-letter prefix, and must not include spaces or hyphens. If a given registration number consists of fewer than twelve characters in the original, the remitting party should add leading zeroes to the numeric

portion of the registration number before adding it to the list. For example, a published work with the registration number “SR-320-918” should be transcribed into the electronic list as “sr0000320918,” and an unpublished work with the registration number “VAu-598-764” should be transcribed into the electronic list as “vau000598764.”

(iii) *Remitters to bear consequences of inaccurate electronic title lists.* The Office will rely on the electronic list of titles for purposes of indexing recorded documents in the Public Catalog and the remitter will bear the consequences of any inaccuracies in the electronic list in relation to the recorded document, including with respect to whether there is effective constructive notice or priority under 17 U.S.C. 205(c). For example, omission of a title from the electronic list such that the title is not properly indexed may affect the ability to claim that the public had constructive notice with respect to that title, even if the title appears in the paper document. If a title appears in the electronic list but is not included in the paper document that is actually recorded, the paper document will control.

(iv) *Treatment of improperly prepared electronic title lists.* The Office reserves the right to reject an electronic title list from any party that is shown to have submitted an improperly prepared file.

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(f) *Return Receipt.* If, with a document submitted for recordation, a remitter includes two copies of a properly completed Recordation Document Cover Sheet (Form DCS) indicating that a return receipt is requested, as well as a self-addressed, postage-paid envelope, the remitter will receive a date-stamped return receipt acknowledging the Copyright Office's receipt of the enclosed submission. The completed copies of Form DCS and self-addressed, postage-paid envelope must be included in the same package as the submitted document. A return receipt confirms the Office's receipt of the submission as of the date indicated, but does not establish eligibility for, or the date of, recordation.

Dated: July 10, 2014

Jacqueline C. Charlesworth,
General Counsel and
Associate Register of Copyrights

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